

## **IC 5-10-5.5**

### **Chapter 5.5. Excise Police and Conservation Enforcement Officers' Retirement Plan**

#### **IC 5-10-5.5-1**

##### **Definitions**

Sec. 1. As used in this chapter and unless the context clearly denotes otherwise:

(a) "Department" means the Indiana department of natural resources.

(b) "Commission" means the alcohol and tobacco commission.

(c) "Officer" means any Indiana state excise police officer, any Indiana state conservation enforcement officer, or any gaming agent.

(d) "Participant" means any officer who has elected to participate in the retirement plan created by this chapter.

(e) "Salary" means the total compensation, exclusive of expense allowances, paid to any officer by the department or the commission, determined without regard to any salary reduction agreement established under Section 125 of the Internal Revenue Code.

(f) "Average annual salary" means the average annual salary of an officer during the five (5) years of highest annual salary in the ten (10) years immediately preceding an officer's retirement date, determined without regard to any salary reduction agreement established under Section 125 of the Internal Revenue Code.

(g) "Public employees' retirement act" means IC 5-10.3.

(h) "Public employees' retirement fund" means the public employees' retirement fund created by IC 5-10.3-2.

(i) "Interest" means the same rate of interest as is specified under the public employees' retirement law.

(j) "Americans with Disabilities Act" refers to the Americans with Disabilities Act (42 U.S.C. 12101 et seq.) and any amendments and regulations related to the Act.

(k) Other words and phrases when used in this chapter shall, for the purposes of this chapter, have the meanings respectively ascribed to them as set forth in IC 5-10.3-1.

*(Formerly: Acts 1972, P.L.1, SEC.1.) As amended by P.L.25-1986, SEC.27; P.L.5-1992, SEC.3; P.L.4-1992, SEC.5; P.L.204-2001, SEC.10; P.L.170-2005, SEC.11.*

#### **IC 5-10-5.5-2**

##### **Creation**

Sec. 2. There is hereby created a state excise police, gaming agent, and conservation enforcement officers' retirement plan to establish a means of providing special retirement, disability and survivor benefits to employees of the department, the Indiana gaming commission, and the commission who are engaged exclusively in the performance of law enforcement duties.

*(Formerly: Acts 1972, P.L.1, SEC.1.) As amended by P.L.170-2005, SEC.12.*

#### **IC 5-10-5.5-2.5**

##### **Qualification of plan under Internal Revenue Code**

Sec. 2.5. (a) As used in this chapter, "Internal Revenue Code":

- (1) means the Internal Revenue Code of 1954, as in effect on September 1, 1974, if permitted with respect to governmental plans; or
- (2) to the extent not inconsistent with subdivision (1), has the meaning set forth in IC 6-3-1-11.

(b) The state excise police, gaming agent, and conservation officers' retirement plan shall satisfy the qualification requirements in Section 401 of the Internal Revenue Code, as applicable to the retirement plan. In order to meet those requirements, the retirement plan is subject to the following provisions, notwithstanding any other provision of this chapter:

- (1) The board shall distribute the corpus and income of the retirement plan to participants and their beneficiaries in accordance with this chapter.
- (2) No part of the corpus or income of the retirement plan may be used or diverted to any purpose other than the exclusive benefit of the participants and their beneficiaries.
- (3) Forfeitures arising from severance of employment, death, or for any other reason may not be applied to increase the benefits any participant would otherwise receive under this chapter.
- (4) If the retirement plan is terminated, or if all contributions to the retirement plan are completely discontinued, the rights of each affected participant to the benefits accrued at the date of the termination or discontinuance, to the extent then funded, are nonforfeitable.
- (5) All benefits paid from the retirement plan shall be distributed in accordance with the requirements of Section 401(a)(9) of the Internal Revenue Code and the regulations under that section. In order to meet those requirements, the retirement plan is subject to the following provisions:
  - (A) The life expectancy of a participant, the participant's spouse, or the participant's beneficiary shall not be recalculated after the initial determination, for purposes of determining benefits.
  - (B) If a participant dies before the distribution of the participant's benefits has begun, distributions to beneficiaries must begin no later than December 31 of the calendar year immediately following the calendar year in which the participant died.
  - (C) The amount of an annuity paid to a participant's beneficiary may not exceed the maximum determined under the incidental death benefit requirement of the Internal Revenue Code.
- (6) The board may not:
  - (A) determine eligibility for benefits;
  - (B) compute rates of contribution; or
  - (C) compute benefits of participants or beneficiaries;

in a manner that discriminates in favor of participants who are considered officers, supervisors, or highly compensated, as prohibited under Section 401(a)(4) of the Internal Revenue Code.

(7) Benefits paid under this chapter may not exceed the maximum benefit specified by Section 415 of the Internal Revenue Code.

(8) The salary taken into account under this chapter may not exceed the applicable amount under Section 401(a)(17) of the Internal Revenue Code.

(9) The board may not engage in a transaction prohibited by Section 503(b) of the Internal Revenue Code.

*As added by P.L.55-1989, SEC.1. Amended by P.L.170-2005, SEC.13.*

### **IC 5-10-5.5-3**

#### **Management; confidentiality of retirement plan records**

Sec. 3. (a) The management administration of the retirement plan created by this chapter is hereby vested in the board of trustees of the public employees' retirement fund.

(b) Records of individual participants in the retirement plan created by this chapter and participants' information are confidential, except for the name and years of service of a retirement plan participant.

*(Formerly: Acts 1972, P.L.1, SEC.1.) As amended by P.L.94-2004, SEC.3.*

### **IC 5-10-5.5-3.5**

#### **Administration of retirement plan consistent with Americans with Disabilities Act**

Sec. 3.5. The state excise police, gaming agent, and conservation enforcement officers' retirement plan shall be administered in a manner that is consistent with the Americans with Disabilities Act, to the extent required by the Act.

*As added by P.L.4-1992, SEC.6. Amended by P.L.170-2005, SEC.14.*

### **IC 5-10-5.5-4**

#### **Participants' saving fund; creation**

Sec. 4. (a) A participants' savings fund is hereby created. This fund shall be maintained by the board as a trust fund, separate and distinct from all other entities for the purpose of securing payment of benefits to participants and their survivors, as hereinafter provided.

(b) The participants' savings fund shall consist of the following:

- (1) each participant's contributions to the fund;
- (2) all gifts, grants, devises and bequests in money, property, or other form which may be made to the fund;
- (3) all interest on investments or on deposits of the fund;
- (4) all contributions or payments to the fund made in any manner provided by the General Assembly, including appropriations from the general fund of the state; and

(5) any funds transferred to the fund from the public employees' retirement fund under the provisions of section 6 of this chapter.

*(Formerly: Acts 1972, P.L.1, SEC.1.)*

#### **IC 5-10-5.5-5**

##### **Participants; eligibility**

Sec. 5. (a) Every person who is an officer on September 2, 1971, shall become a participant, unless the officer files a written notice of his election not to participate with the board within twenty (20) days prior to September 2, 1971.

(b) Every person who becomes an officer after September 2, 1971 shall become a participant as a condition of his employment.

(c) Any officer who elects not to become a participant shall thereafter be forever ineligible to become a participant.

*(Formerly: Acts 1972, P.L.1, SEC.1.)*

#### **IC 5-10-5.5-6**

##### **Transfer of funds to savings fund**

Sec. 6. (a) Upon election to become a participant by any officer who is a member of the public employees' retirement fund, the board shall transfer all funds standing to the credit of the electing officer in the public employees' retirement fund to the participants' savings fund created by this chapter.

(b) Except as otherwise provided in this chapter, a transfer of funds under the provisions of subsection (a) of this section constitutes a full and complete discharge of all of the rights of the electing officer under the public employees' retirement fund.

*(Formerly: Acts 1972, P.L.1, SEC.1.)*

#### **IC 5-10-5.5-7**

##### **Transfer of creditable service**

Sec. 7. Upon election to become a participant by any officer who is a member of the public employees' retirement fund, the board shall transfer all creditable service standing to the credit of the electing officer under the public employees' retirement fund to the credit of the electing officer under the retirement plan created by this chapter.

Creditable service under this chapter, including credit for military service, shall accrue and be computed and credited to participants in the same manner and in the same amount as creditable service accrues, is computed and credited under the public employees' retirement law.

*(Formerly: Acts 1972, P.L.1, SEC.1.)*

#### **IC 5-10-5.5-8**

##### **Contributions; rate; payroll deductions**

Sec. 8. (a) Every participant shall contribute three percent (3%) of the first eight thousand five hundred dollars (\$8,500) of his annual salary to the participants' savings fund.

(b) Contributions shall be made in the form of payroll deductions

from each and every payment of salary received by the participant. Every participant shall, as a condition precedent to his becoming a participant, consent to the payroll deductions.  
(Formerly: Acts 1972, P.L.1, SEC.1.)

#### **IC 5-10-5.5-9**

##### **Retirement provisions**

Sec. 9. (a) Except as provided in subsection (b), every participant is required to retire on the first day of the month following the participant's sixtieth birthday.

(b) An officer who becomes a participant after becoming fifty (50) years of age is required to retire on the earlier of:

- (1) the first day of the month following the participant's sixty-fifth birthday; or
- (2) the first day of the month following the completion of ten (10) years of service.

(Formerly: Acts 1972, P.L.1, SEC.1.) As amended by P.L.38-1986, SEC.1; P.L.55-1987, SEC.1; P.L.55-1989, SEC.2.

#### **IC 5-10-5.5-10**

##### **Retirement allowance**

Sec. 10. (a) Benefits provided under this section are subject to section 2.5 of this chapter.

(b) The annual retirement allowance of a participant, payable in equal monthly installments beginning on his normal retirement date, shall be a percentage of his average annual salary, such percentage to be twenty-five percent (25%) increased by one and two-thirds percent ( $1\frac{2}{3}\%$ ) of his average annual salary for each completed year of creditable service more than ten (10) years and one percent (1%) of his average annual salary for each completed year of creditable service more than twenty-five (25) years.

(c) The annual retirement allowance shall cease with the last monthly payment prior to the death of the participant.

(Formerly: Acts 1972, P.L.1, SEC.1.) As amended by P.L.55-1989, SEC.3.

#### **IC 5-10-5.5-11**

##### **Early retirement**

Sec. 11. (a) Any participant who has attained the age of forty-five (45) years and has accrued at least fifteen (15) years of creditable service may retire and become eligible for benefits as provided in section 12(a) of this chapter.

(b) If:

- (1) a participant is at least fifty-five (55) years of age; and
- (2) the sum of the participant's years of creditable service and age in years equals at least eighty-five (85);

the participant may retire and become eligible for benefits as provided in section 12(b) of this chapter.

(Formerly: Acts 1972, P.L.1, SEC.1.) As amended by P.L.10-1995, SEC.2.

#### **IC 5-10-5.5-12**

##### **Early retirement allowance; monthly installments**

Sec. 12. (a) The amount of annual retirement allowance payable in equal monthly installments to a participant who retires under section 11(a) of this chapter (relating to early retirement) shall be determined in accordance with section 10(a) of this chapter (relating to normal retirement). However, the amount of annual retirement allowance otherwise payable upon early retirement shall be reduced by one-quarter percent ( $1/4\%$ ) for each full month that the date of early retirement precedes the attainment of the participant's sixtieth birthday.

(b) The amount of annual retirement allowance payable in equal monthly installments to a participant who retires under section 11(b) of this chapter (relating to early retirement) shall be determined in accordance with section 10(a) of this chapter (relating to normal retirement).

*(Formerly: Acts 1972, P.L.1, SEC.1.) As amended by P.L.10-1995, SEC.3.*

#### **IC 5-10-5.5-12.5 Repealed**

*(Repealed by P.L.25-1994, SEC.12.)*

#### **IC 5-10-5.5-12.7**

##### **Determinations by board of trustees; impairment standards; transcripts, reports, records, and other materials**

Sec. 12.7. (a) Upon a petition from a participant, the department, or the commission, the board of trustees of the public employees' retirement fund, or its designee, shall make the determinations required by section 13 of this chapter and shall also determine:

- (1) the degree of impairment of any officer determined to be disabled; and
- (2) whether the disability arose in the line of duty (as defined in section 13.5 of this chapter).

(b) The impairment standards contained in the United States Department of Veterans Affairs Schedule for Rating Disabilities in effect at the time the application for disability benefits is filed with the board of trustees shall be used to determine the degree of impairment.

(c) To the extent required by the Americans with Disabilities Act, the transcripts, reports, records, and other material generated as a result of a hearing, a review, or an appeal conducted under this chapter to determine the existence of a disability, the cause of a disability, or the degree of impairment shall be:

- (1) kept in separate medical files for each member; and
- (2) treated as confidential medical records.

*As added by P.L.56-1987, SEC.2. Amended by P.L.1-1990, SEC.57; P.L.4-1992, SEC.7; P.L.25-1994, SEC.1.*

#### **IC 5-10-5.5-13**

##### **Permanent or temporary disability**

Sec. 13. Any participant who becomes permanently or temporarily disabled from performing all suitable and available work on the force for which he is or may be capable of becoming qualified, considering reasonable accommodation to the extent required by the Americans with Disabilities Act, shall be entitled to disability benefits in the amount provided by this chapter. Benefits may not be provided under this section for any disability:

- (1) resulting from an intentionally self-inflicted injury or attempted suicide while sane or insane;
- (2) resulting from the member's commission or attempted commission of a felony; or
- (3) which begins within two (2) years after a member's entry or reentry into active service on the force and which was caused or contributed to by a mental or physical condition which manifested itself before the member entered or reentered active service.

*(Formerly: Acts 1972, P.L.1, SEC.1.) As amended by Acts 1981, P.L.48, SEC.1; P.L.56-1987, SEC.3; P.L.4-1992, SEC.8.*

#### **IC 5-10-5.5-13.5**

##### **Disability occurring after June 30, 1987; presumption for line of duty disability; monthly benefits**

Sec. 13.5. (a) This section applies to participants whose disability occurred after June 30, 1987.

(b) Benefits provided under this section are subject to section 2.5 of this chapter.

(c) As used in this section, a disability is to be considered to have arisen in the line of duty if the disability is the direct result of:

- (1) a personal injury that occurs while the participant is on duty; or
- (2) a personal injury that occurs while the participant is off duty and responding to an offense or an emergency or a reported offense or emergency;

or if the disability is presumed incurred in the line of duty under IC 5-10-13.

(d) A participant whose disability arose in the line of duty is entitled to a monthly benefit equal to the participant's monthly salary on the date of disability multiplied by the degree of impairment (expressed as a percentage impairment of the person as a whole). However, the monthly benefit under this subsection must be at least:

- (1) twenty percent (20%) of the participant's monthly salary on the date of the disability if the participant has more than five (5) years of service; or
- (2) ten percent (10%) of the participant's monthly salary on the date of the disability if the participant has five (5) or fewer years of service.

(e) A participant whose disability did not arise in the line of duty is entitled to a monthly benefit equal to one-half (1/2) of the participant's monthly salary on the date of disability multiplied by the degree of impairment (expressed as a percentage of the person as a

whole). However, the monthly benefit under this subsection must be at least:

- (1) ten percent (10%) of the participant's monthly salary on the date of the disability if the participant has more than five (5) years of service; or
- (2) five percent (5%) of the participant's monthly salary on the date of the disability if the participant has five (5) or fewer years of service.

*As added by P.L.56-1987, SEC.4. Amended by P.L.55-1989, SEC.4; P.L.185-2002, SEC.1.*

#### **IC 5-10-5.5-14**

##### **Disability occurring before July 1, 1987; allowance; monthly installments; cessation**

Sec. 14. (a) Benefits provided under this section are subject to section 2.5 of this chapter.

(b) This subsection applies to participants who were disabled before July 1, 1987. Any participant eligible to receive disability benefits under section 13 of this chapter is entitled to an annual disability allowance payable in equal monthly installments and equal to a percentage of his average annual salary determined in accordance with the provisions of section 10(a) of this chapter (relating to normal retirement).

(c) Payment of disability benefits shall begin with the month next succeeding the month in which the participant is determined to be disabled and shall cease:

- (1) with the last payment prior to the participant's death; or
- (2) with the last payment before the time the participant is no longer disabled;

whichever occurs first. However, after becoming forty-five (45) years of age, a participant receiving a disability benefit may request that the disability benefit payments cease and that any retirement benefit for which the participant is eligible begin.

(d) If a member receives disability or retirement benefits from another state funded pension fund, he is not entitled to receive disability benefits under this section.

*(Formerly: Acts 1972, P.L.1, SEC.1.) As amended by Acts 1977, P.L.2, SEC.4; Acts 1981, P.L.48, SEC.2; P.L.56-1987, SEC.5; P.L.55-1989, SEC.5; P.L.41-1991, SEC.1.*

#### **IC 5-10-5.5-15**

##### **Surviving mothers, fathers, spouses, or unmarried children; eligibility for benefits**

Sec. 15. Surviving mothers, fathers, surviving spouses or unmarried children under the age of eighteen (18) years, of participants who have accrued at least fifteen (15) years of creditable service and who die, shall be entitled to receive survivors' benefits in the amount hereinafter provided. Survivor's benefits shall be paid to such of the above enumerated persons as the participant shall nominate by written direction duly acknowledged and filed with the



board.

*(Formerly: Acts 1972, P.L.1, SEC.1; Acts 1975, P.L.21, SEC.2.)*

#### **IC 5-10-5.5-16**

##### **Survivors benefits; amount**

Sec. 16. (a) Benefits provided under this section are subject to section 2.5 of this chapter.

(b) A surviving mother or father nominated by the participant to receive survivors' benefits under the provisions of this chapter shall be entitled to an annual survivors' allowance for life equal to fifty percent (50%) of the amount the participant would have been entitled to if he had retired.

(c) A surviving spouse nominated by the participant to receive survivors' benefits under the provisions of this chapter shall be entitled to an annual survivors' allowance equal to fifty percent (50%) of the amount the participant would have been entitled to if he or she had retired. In the case of a surviving spouse who is more than five (5) years younger than the deceased participant at the time of the participant's death, the amount of the annual survivors' allowance shall be reduced actuarially, without regard to the sex of the spouse or the participant. In all cases the survivors' allowance to a surviving spouse shall cease with the last payment prior to the surviving spouse's death.

(d) A surviving child eligible and nominated by the participant to receive survivors' benefits under the provisions of this chapter shall be entitled to an annual survivors' allowance equal to fifty percent (50%) of the amount the participant would have been entitled to if he had retired. If more than one (1) surviving child is eligible and nominated to receive survivors' benefits, the annual allowance shall be divided equally between or among such children. In all cases, the survivors' allowance to a child shall cease when the child attains the age of eighteen (18) years or marries, whichever occurs first. Where a survivors' allowance is divided between or among more than one (1) child, and payments to one (1) or more children cease, the total annual allowance payable shall be divided evenly among or between such of the remaining children who are eligible therefor.

(e) In the event that no nomination is made by an eligible participant, or in the event that the nominated survivor predeceases the participant and no contingent survivor is nominated and an eligible participant dies, no survivors' allowance shall be payable. In such case, the board shall make a lump sum payment to the estate of the deceased participant equal to the total of all funds standing to the credit of the participant in the participant's savings fund plus accumulated interest thereon.

(f) A survivor's allowance under this section that was terminated because of a surviving spouse's remarriage shall be reinstated on July 1, 1997, and continue during the life of the surviving spouse.

*(Formerly: Acts 1972, P.L.1, SEC.1; Acts 1975, P.L.21, SEC.3.) As amended by P.L.55-1989, SEC.6; P.L.40-1997, SEC.1.*

#### **IC 5-10-5.5-17**

##### **Lump sum refund of contributions or payments**

Sec. 17. Any participant whose employment as an officer is terminated before accumulating fifteen (15) years of creditable service and before attaining the age of forty-five (45) years shall be entitled to a lump-sum refund of all contributions standing to his credit in the participants' savings fund plus accumulated interest thereon.

(b) If a participant dies before accumulating fifteen (15) years of creditable service, all contributions standing to his credit in the participants' savings fund plus the accumulated interest thereon shall be paid by the board to the person the participant shall nominate by written direction duly acknowledged and filed with the board. The payment may be in the form of a lump sum or a series of payments, at the discretion of the board.

(c) If a participant dies before accumulating fifteen (15) years of creditable service and has nominated no beneficiary, or in the event that the participant's nominee predeceases him, all contributions standing to his credit in the participants' savings fund, plus accumulated interest thereon shall be paid by the board to the estate of the deceased participant. The payment may be in the form of a lump sum or a series of payments, at the discretion of the board.

(d) If a participant terminates his employment after accumulating fifteen (15) years of creditable service, but before becoming eligible for any benefits under this chapter, no refund of contributions and interest shall be allowed. In such case, the participant's contributions shall be retained by the board until the participant becomes eligible for benefits. At that time, benefits shall be paid to, or on behalf of the participant in the same manner and in the same amount as all similar benefits are paid.

*(Formerly: Acts 1972, P.L.1, SEC.1.)*

#### **IC 5-10-5.5-18**

##### **Termination of service before accumulating 15 years of creditable service**

Sec. 18. Any participant who terminates his service as an officer before accumulating fifteen (15) years of creditable service may, in the manner and under the conditions provided in the public employees' retirement law, again become a member of the public employees' retirement fund. Upon payment of contributions and interest required by the board, the withdrawing participant shall be entitled to transfer creditable service standing to his credit under this chapter to his credit under the public employees' retirement law.

*(Formerly: Acts 1972, P.L.1, SEC.1.)*

#### **IC 5-10-5.5-19**

##### **Public employees retirement fund law; applicability**

Sec. 19. The retirement plan created by this chapter shall, in all respects to the extent applicable and except as otherwise specifically enumerated in this chapter, be governed by the law creating the

public employees' retirement fund, and for that purpose, the provisions of IC 5-10.3 are hereby incorporated into this chapter by reference.

*(Formerly: Acts 1972, P.L.1, SEC.1.) As amended by P.L.25-1986, SEC.28.*

#### **IC 5-10-5.5-20**

##### **Old age and survivors benefits; supplemental retirement benefits; rights and liabilities not affected**

Sec. 20. Participation in the retirement plan created by this chapter shall not affect the participant's rights and liabilities under the provisions of IC 5-10.1, IC 5-10.2, and IC 5-10.3.

*(Formerly: Acts 1972, P.L.1, SEC.1.) As amended by P.L.25-1986, SEC.29.*

#### **IC 5-10-5.5-21**

##### **Increase in monthly benefits**

Sec. 21. (a) Except as provided in subsection (d), the monthly benefit payable after June 30, 1987, to a participant, or a survivor or beneficiary of a participant, who retired or was disabled before July 2, 1986, shall be increased by an amount determined by the board. The board shall determine the amount for each participant, survivor, and beneficiary so that the monthly benefit is increased by one-half (1/2) the amount that the monthly benefit would have been increased if the participant had been a member of the public employees' retirement fund on the date of retirement or disability.

(b) Except as provided in subsection (d), the monthly benefit payable after June 30, 1988, to a participant, or a survivor or beneficiary of a participant, who retired or was disabled before July 2, 1987, shall be increased by an amount determined by the board. The board shall determine the amount for each participant, survivor, and beneficiary so that the monthly benefit is increased to the amount that the monthly benefit would have equaled if the participant had been a member of the public employees' retirement fund on the date of retirement or disability.

(c) Except as provided in subsection (d), the monthly benefit payable after June 30, 1989, to participants, survivors, and beneficiaries shall be increased by the same percentages and under the same conditions as monthly benefits are increased under IC 5-10.2-5 for members of the public employees' retirement fund and their survivors and beneficiaries.

(d) This section is applicable only if the general assembly provides sufficient funding for the increased cost of the benefits provided by this section.

*As added by P.L.56-1987, SEC.6. Amended by P.L.4-1990, SEC.4.*